

MINUTES

WARRICK COUNTY AREA BOARD OF ZONING APPEALS

Regular meeting held in the Conference Meeting Room
Second Floor, Court House
Boonville, Indiana
March 26, 2008 at 6:00 P.M.

MEMBERS PRESENT: Larry Willis, Chairman of the Board; Tony Curtis, Terry Dayvolt, Scott Dowers, William McCune, Richard Medcalf, and Don Mottley.

Also present were: Morrie Doll, Attorney; Sherri Rector, Executive Director and Secretary; and Christy Powell, staff.

MEMBERS ABSENT: None.

MINUTES:

Mr. Willis asked if everyone got a copy of the minutes from January 23, 2008. He asked if there were any corrections or additions to those minutes. There being none he entertained a motion.

Don Mottley made a motion to accept the minutes from the January 23, 2008 meeting.

William McCune seconded and the motion unanimously carried.

Mr. Willis explained the rules of procedure.

SPECIAL USE:

BZA-SU-08-04 – Applicant: Charles E Smith Owners: Charles E & Marla L Smith
Premises – Property located on the E side of Fehd Rd. (W 975). approximately 850’ N of the intersection formed by Fehd Rd. (W 975) and Fisherville Rd. (N 350), Campbell Twp., Lt 25 Asbury Heights 3644 Fehd Rd.

Nature of Case – Applicant requests a Special Use, SU-24, for the district requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN, to allow a dog kennel on property with an existing residence in an “A” Agricultural Zoning District. *Advertised in the Boonville Standard on March 13, 2008.*

Charles & Marla Smith approached the podium.

The Chairman requested a staff report.

Mrs. Rector stated they do have all return receipts from certified mail of notice of this meeting. She stated the office had to re-notice the adjacent property owners due to a staff error made with the ad getting in the paper. She stated the ad was not placed in time to make the February meeting and the office re-noticed the adjacent property owners that the meeting was rescheduled for March. She stated that is why it took two months for this to get before the Board. She stated the applicant requests a Special Use SU-24 to allow for a dog kennel on property with an existing residence. She stated the property is approximately 2.51 acres zoned “A” Agriculture with all surrounding properties zoned the same with residences except for the property to the west which is a vacant lot. She stated the applicant states on the application, “I would like to have a kennel license appointed to me so I can keep dogs on my property. I use these dogs as hunting dogs and I travel around the county field trialing these dogs.” She stated the applicant was denied a Conditional Use for a dog kennel BZA-CU-03-16 in May of 2003. She stated the applicant had a formal complaint filed in the office on October 15, 2007 by an adjacent property owner, Barry Holland at 3688 Fehd Rd. Mr. Holland stated on the complaint that he has dog kennels, dog breeding, and dogs barking all the time. He stated he sells the dogs. He stated there are people coming up all the time and bringing dogs. He stated they run in their yard and they go to the restroom in their yard. She stated the zoning inspector went out and took pictures and met with Mr. Smith. She stated the Zoning Inspector wrote on his report “Mr. Smith on

December 19, 2007 admitted having 14 dogs. He stated he is boarding 2 for his father and 4 for a friend. He stated he trains dogs as supplemental income. He stated there are 4 dogs less than 6 months old. Mr. Blair stated on the report that this complaint is a result of a dispute (non-dog related) with complainant. Mrs. Rector stated she doesn't know how he made that determination but he did. She continued he wrote "the dogs were all penned and he did not see evidence of random going to the restroom in the yard." She stated the office sent Mr. Smith a letter on January 14, 2008 (copy in the Board's folders) stating he was in violation and he needed to have all the dogs removed that are over six months old except for three or file a Special Use for a dog kennel. She stated that after Mr. Smith received the letter he called the office and then came in and filed a Special Use for a dog kennel. She stated she does have two letters of remonstrance, one is an email and the other is a letter. She stated she will read them both into the record. (Copy on file)

Mr. Willis asked if the petitioner had anything to add to the staff report.

Mr. Smith stated it is a misconception that he is asking for a kennel license. He stated he's just asking to be allowed to have 6 or 7 dogs. He stated he runs field trials all around the country. He stated as far as the covenants in their subdivision, or in Warrick County, unlicensed vehicles are not allowed on people's property. He stated they've got a slight junkyard beside their house with 9 unlicensed vehicles. He stated they've had junk and crashed cars parked behind the barn. He stated if everything was a perfect world somebody could complain. He stated they deal with parties until 2 a.m. with blaring music all night and they light a burn barrel with some kind of paint fumes in it that makes a black cloud throughout their whole neighborhood which gets in their house. He stated he is not asking to run a kennel, he just wants to have a maximum of 6 or 7 dogs. He stated he is down to 8 dogs right now and he could be down two more as soon as possible. He stated the neighbors are talking about them depreciating the value of the neighborhood when there are sinking houses, junk yards, dogs roaming free. He stated there are two black labs that live down the road that have torn up so much property around the neighborhood and run loose all the time. He stated they can't walk in their neighborhood because there are two black labs growing. He stated there are four dogs that live down the road that got out and came down to their house and got their horse down on the ground, three of the dogs came at his dad.

Mr. Willis stated he understands all that but Mr. Smith is making the application for the kennel.

Mr. Smith stated that he understands that but they've got dogs in their neighborhood that run loose all the time and going to the restroom in their yard.

Mrs. Rector asked if the 6 or 7 dogs include all the dogs or unweaned dogs too. She stated that could make a big difference.

Mr. Smith stated weaned dogs go up to 6 months old. He stated he would be okay with 5 weaned dogs and 5 unweaned. He stated for the game he plays he has to have a pretty special dog to run competition. He stated he may have 4 puppies, and those dogs don't make the cut, so he'll sell them or give them away.

Mrs. Rector stated she wants him to understand that he isn't applying for a kennel license, major or minor, it is a kennel, period and they do have the right to limit the number of dogs if it is approved.

Mr. Willis asked if there was anything else he wanted to add. There being nothing to add, he asked the Board for questions.

Mr. Mortley stated in 2003 there was a complaint and he was denied a conditional use for a kennel. He stated now it is 2008 and they've got another complaint. He asked why he didn't think they would take action with this. He asked why he thought he could bring those dogs back over the amount approved by Warrick County ordinance.

Mr. Smith stated his neighbors both put kennels on their property last time so some of his dogs went there and some to the back of the property. He stated then the neighbor moved so he brought the dogs back on his property. He stated when his Dad went out of town he brought his dogs back to his property. He stated all his dogs were back at his house at the time of the complaint. He stated he's not saying it is right but at that time, it was the most dogs he's ever had there at any time.

Mr. Medcalf stated he's got 8 dogs there now when he's supposed to have 3.

Mrs. Rector stated for clarification this is not a hearing about parties at 2 in the morning or unlicensed cars or any of that.

Attorney Doll stated those could be formal complaints filed or the Sheriff's Department can look into it etc.

Mr. Willis stated only the applicants Special Use request is what is in front of this Board.

Attorney Doll requested to ask a couple of questions. Mr. Doll stated according to the Inspector's report on October 14, there were 14 dogs there. He asked if that was correct.

Mr. Smith stated yes he was right. He stated at that time 14 dogs consisted of 6 unweaned dogs. He stated they also had 4 of his friend's dogs at that time.

Attorney Doll asked if he sells these dogs. He stated the Inspector's report states he sells dogs to supplement his income. He asked if this is an income generating endeavor by the petitioner.

Mr. Smith stated there's not enough money made there to be a business. He stated he sells broke dogs or puppies but not like a puppy factory where there's three or four litters of puppies. He stated he raises a litter of puppies here and there.

Marla Smith stated it's a hobby.

Attorney Doll asked how long he has been field training dogs and keeping them on his property.

Mr. Smith stated he has raised and broke dogs since he's been 7 years old. He stated he started field trialing them when he was 15. He stated it's just something he's always done.

Attorney Doll asked if in 2002 when he was denied, what happened to the dogs after that denial. He asked him if they've been there since then.

Mr. Smith stated he got rid of some and the adjoining neighbor on the side and the back let him put a few dogs on their property.

Attorney Doll asked if they were still his dogs.

Mr. Smith stated yes.

Mr. Willis stated he wanted to understand exactly what Mr. Smith does. He stated Mr. Smith puts on field trials for dogs and then some of the entries of those dogs belong to him and he trains dogs and sells the non-trainable dogs. He asked if that was right.

Mr. Smith stated if a dog doesn't produce he either gives it a way or sells it.

Mr. Willis stated that Mr. Smith tried to circumvent the Board's reasoning at the last meeting. He asked how he got the neighbors to take the excess dogs that he had to put on their property.

Mr. Smith stated the neighbors offered.

Mr. Willis asked if he paid the neighbors to put the dogs on their property.

Mr. Smith stated no he still took care of them. He stated they were still his dogs.

Mr. Willis stated they were Mr. Smith's responsibility. All the neighbors were doing was providing another piece of property to store dogs.

Mr. Smith stated he was told at the last Board meeting that that was another way of keeping the dogs. He stated the neighbors offered to keep the dogs on their property. He stated the neighbor behind him would do it again but he's not going to do that. He stated he will get down on the numbers, that is why he is asking for the limit of 6 to 7 dogs and he could keep it on his own property. He stated he has no problem if this goes through with enclosing the kennels.

Mr. Willis asked if there were any other questions by Board Members.

Mr. McCune asked Mr. Smith what kind of dogs he keeps.

Mr. Smith stated they are bird dogs; English Setters and English Pointers. He stated they are not like a hound or a beagle that are prone to barking.

Mr. Willis asked for any further questions by Board Members. There being none he asked for any remonstrators for this petition. Seeing none, he asked if there were any remonstrators against this petition.

Barry and Pam Holland approached the podium and stated they live next door to Mr. Smith at 3688 Fehd Rd. He stated his biggest complaint is the dogs barking, the smell and the fact that Mr. Smith trains other people's dogs. He stated there's been several times people come up with big kennels on trailers and leave their dogs there and he doesn't know how many he's got there now but he's been told by other neighbors that have been inside the pen, they've seen 18-20 dogs in there. He stated he really feels that Mr. Smith came before this Board and was turned down before and he's done what he pleases and if you let him go through with the 6 or 7, he guarantees there will be a 100 dogs out there. He stated it is a mess and it's always been a mess.

Kathy Boyd approached the podium and stated her address as 9588 Fisherville Road. She stated she lives southeast of his property and does not adjoin his property but she was informed about this meeting. She stated where she lives there is not a night that goes by she's not woke up at all hours of the night and morning. She stated she realizes that they have coyotes, they live in the county and they expect that, but then all the dogs start chiming in. She stated one or two dogs is one thing, and she has a dog that lives with her and sleeps next to her and she has no problem with the Smith family, they are a good family. She stated she has a real problem with these dogs. She stated she can't open her windows. She stated she has a lot of glass on her house and she has no sound break against these dogs at all hours of the night. She stated she put all those windows in so she could open them up and enjoy the spring and the fall. She stated she hasn't been able to open her windows in four years. She stated she never says anything because she doesn't want to cause trouble. She stated she pays exorbitant property taxes in this county. She stated the Board limited him to three dogs and he didn't care. She stated he does what he wants to do. She stated if the Board lets him do this, they will have so many dogs out there. She stated she built her own house and that's the house she plans on living in for a very long time and the reason she chose that area is because they have restrictions, things set in place to protect the neighborhood. She stated one of her passions is to garden and she can't enjoy that or entertain friends on the patio she built for \$5000 because of the noise and the smell and she's a pretty good distance away. She stated all she is asking is that the Board considers the people that live around there. She stated some of them don't want to come forward and cause trouble and she doesn't either it's just a person can only take so much. She stated if she has to she'll start calling the Sheriff over the noise. She stated the lady who owns the property with her and the lady who lives across the street on Fisherville Rd. also sent letters to be read at this meeting (copy on file). She stated what she does has not affected any other neighbor's quality of life, what he is doing has affected everybody else's quality of life.

Mr. Willis asked for other remonstrators against this petition to come forward.

Tom Newmaster 4522 Gander Rd. approached the podium and stated he is with Newmaster Development and is the person who developed the subdivision as well as the protective restrictive covenants. He stated Mr. Smith asked him before they purchased the home they are currently in and was very truthful and kind and courteous in his presentation of wanting to have a home and to have a kennel. He stated at that point he shared with him that he couldn't help him because all of his subdivisions' protective covenants are identical to Warrick County's which states anything more than 3 dogs is considered a kennel and hence a commercial piece of real estate and that barking dogs were considered to be a nuisance as well as the smell. He stated he went ahead and bought a home in that area and went ahead and put his kennel in. He stated unfortunately several neighbors have gotten into it over the barking dogs and they have lost two homes possibly a third one over the dog situation. He stated some of the dogs got out and went into a neighbor's yard and they got into a big rift and he told Mr. Smith he was going to pop the dogs with a pellet gun. He stated it happened again and the neighbor killed one of the dogs and its been a downward spiral since then. He stated Charles Smith is a nice guy. He stated he understands hunting and fishing and that sort of thing. He stated he owns North Wind Game Preserve but he has to go by the covenants and the rules of the State of Indiana to be permitted to allow dogs to come in certain designated areas to do their hunting and trainings. He stated he asks that Warrick County hold up their laws for the families that invested hundreds of thousands

of dollars. He stated he wants to develop the property across the street and if they aren't going to back up the laws that Warrick County has put together, then a developer may not even bother making protective restrictive covenants.

Mr. Willis asked for further remonstrators.

Jeff Wagner, 3700 Fehd Rd. approached the podium. He stated he lives two houses down from the Smiths. He stated he would just like to bring to the Board's attention some of the meeting notes from the previous SU-24 reviews. He stated one of the things that were amended in 2005 was that the SU-25 is not allowed to have any associated business with it which Mr. Smith has mentioned that he sells a few puppies which would constitute a business activity. He stated there is an issue with the septic site which has been brought up in previous SU-24s where the health inspector has to review the site for a proper septic system for the waste. He stated that was from the February 28, 2007 BZA meeting minutes.

Mr. Willis asked for any further remonstrators.

Jeramie Campbell, 3522 Fehd Rd. approached the podium. He stated he built his own house. He stated the reappraisal on his house is over \$300,000. He stated he has personally put every piece of concrete, shingle, etc. with the hopes to raise a family, retire, sell the house, and use the profits as a nest egg. He stated he feels if they allow certain breakages on the covenants which he was led to believe would be protected, what is next. He stated he has never had a problem or a cross word with anyone in that subdivision. He stated he respects everybody and he talks well about everybody. He stated he has never had an issue with the sound because he's usually running construction equipment but it is not what he has invested all this money in a home for.

Tracy and George Donley approached the podium.

Tracy Donley stated they live right next door to the Smith's at 3600 Fehd Rd. She stated they feel if they get this special use their property value will go down and they won't be able to sell their home if they ever want to.

George Donley asked why they give Mr. Smith 24 hour notice of the inspection. He stated they should come over right away without giving notice. He stated that just gives him a chance to get the dogs out of there. He asked the Board if they would approve a kennel next door to where they lived.

Mr. Willis stated he doesn't think they should respond to that question while they have this under determination but Mrs. Rector could answer the question on the inspector giving notice.

Mrs. Rector stated they don't give notice of an inspection. They don't have any idea the inspector is coming.

Mr. Willis stated there may be a delay between the time the complaint comes in and the inspector goes out and works it into his schedule. He stated he has other obligations as the Building Inspector. He stated Building contractors have to have certain inspections at certain times during their scheduling while they are constructing something. He stated he has to work in a violation inspection when he is in the neighborhood or when he can. He stated as far as he knows, he doesn't give anybody notice that he is going to inspect.

Mr. Willis asked for any other remonstrators. There being none, Mr. Willis had Mrs. Rector read the two additional letters submitted by Mrs. Boyd. (Copy on file) He asked Mr. Smith if he had a rebuttal.

Mr. Smith stated he doesn't want to go against anybody. He stated he probably wouldn't be here if a lot of the neighbors would have said how they felt to begin with. He stated part of being a neighbor is telling people how they feel. He stated if they can't then it's a personality problem. He stated they talk about the barking, there are dogs all around this neighborhood. There are 3 coon dogs living in the house caddy corner to the lady who wrote the last letter, and he loves those neighbors to death. He stated her dogs howl all night and all day. He stated you could take those three dogs and they would out do his any day of the week. He stated as for the Hayden guy, he lives closer to a 20 dog kennel then his property so if he's hearing barking and whining, thathe can hear them from his house. He stated there are a lot of dogs to be heard in the neighborhood. He stated the lady up the street has a pit bull and a black dog that bark non-stop.

Mr. Mottley asked if the 20 dog kennel he just referred to has a permit.

Mr. Smith stated he doesn't know, it's none of his business, he's just asking how the neighbor's know it's his dogs and not that 20 dog kennel 100 yards from their house.

Mr. Mottley asked if it was in the same subdivision.

Mr. Smith stated no, it's directly out of their subdivision.

Mr. Willis asked for other questions by Board Members.

Mr. Medcalf stated Mr. Newmaster made a comment about when Mr. Smith looked at purchasing a home he was told up front he could not have a kennel.

Mrs. Smith stated neither her nor her husband ever set foot in Mr. Newmaster's office.

Mr. Medcalf stated that Mr. Newmaster stated he addressed that he could not have a kennel. He asked if that happened or not.

Mr. Smith stated no, it did not. He stated they called Mr. Newmaster about purchasing some land and he told them he had to ask his Board about the dog kennel. He stated his Board consisted of him and his Dad. He stated Mr. Newmaster's Dad called back and left 9 messages on his answering machine telling him there would be no problem with the dogs. He stated he then purchased the property immediately. He stated he had talked with Jerry Aigner about building on his property. Mr. Smith stated that Mr. Aigner stated he couldn't have the dog kennel. Mr. Smith stated he then called Mr. Newmaster and asked him if he could have the kennel and was told it wouldn't be a problem. He stated he told Mr. Newmaster exactly how he was going to build it with the pole barn and privacy fence and dogs inside the privacy fence. He stated that is why he bought this property. He wouldn't have if it wasn't okayed from the get go.

Mr. Willis asked Mr. Smith if he received a copy of the restrictive covenants of the subdivision when he bought the house.

Mr. Smith stated he did not. He stated their house was 6 months old when they bought it.

Mr. Willis asked for any other questions by Board Members.

Terry Dayvolt asked Mr. Smith why he went against this Board's ruling when he was asked to drop the number of dogs on the property and then he comes back on another complaint and has 14 dogs.

Mr. Smith stated he knows it was wrong. He stated his neighbors let him put the dogs on their property then the next door neighbor moved and he had to take the dogs back on their property. He stated they are spread out and come and go; he's had dogs at his brothers etc.

Mr. Dayvolt stated he is asked not to do something and when the inspector goes out and finds 14 dogs living on the property at that point and time. He asked why there were 14 dogs there. He stated he would like a good explanation.

Mr. Smith stated he doesn't have a good explanation. He stated at the time all this went down, Alcoa was talking strike so he was going to supplement his income during that. He stated they didn't end up striking.

Mr. McCune asked why he didn't notify the Board that he did have that many dogs when he was told a limit of how many dogs he could have.

Mr. Smith stated he doesn't know why.

Mrs. Rector stated calling wouldn't have done him any good because he would have been told no but he could have re-filed for the special use.

Mr. Willis asked for any further questions from Board Members. There being none he entertained a motion.

Attorney Doll stated if a person is engaged in a profit making enterprise, there has to be a home occupation. He stated the home occupation ordinance doesn't comply with this. He stated if he wants the kennel for his own use, he loves dogs, he wants twelve of them, that is one thing and the Board would be dealing with the kennel question. He stated if it is a business then there is a double issue. He stated he would then have to meet the standards for a home occupation which he doesn't think he can. He stated the ordinance states the home occupation can only take up 25% of the dwelling which the dogs are obviously not in the dwelling and they are viewable from the outside which also violates the home occupation statute. He stated on page 28 in the Comprehensive Zoning Ordinance, the statute that impedes the Board from permitting anything that causes a nuisance. He stated it reads for the record, "nothing shall be allowed on the premises in any district, provided for in this Article that shall in any way be offensive or noxious by reason of the emission of odors, gases, dust, smoke, light, vibration, or noise." He continued "nor shall anything be constructed or maintained that would in any way constitute an eyesore or nuisance to adjacent property owners or residents in the community." He stated they can't consider the private restrictions of the subdivision. He stated it is a private contract dispute between the current developer and The Smiths. He stated they can give them no weight whatsoever in the Board's deliberations. He stated also pursuant to some recent cases by the Supreme Court, the Board can't give any weight to assertions that something depreciates the property value unless they have an independent expert witness testify. He stated they can't consider opinion. He stated he thinks they can consider the issue of whether the current use for the future kennel would offensively be a nuisance for them. He stated they've heard testimony about odor and noise. He stated that could be considered in the Board's deliberations. He stated he just wanted to point out if they decide to approve it or deny it; they don't want to do so for the wrong reasons. He stated they need to consider it on something solid like the issue of the home occupation and whether it's profit making or not or the issue of it constituting a nuisance.

Mr. Willis asked for any discussion. He stated Mr. Smith has said at least three times, supplemental income. He stated he is using his property and having people bring things to him and provides a service. He stated that is a home occupation. He stated the remonstrators talked about the tranquility of life that they want to enjoy without the nuisance of the loud barking dogs.

Mrs. Rector asked Attorney Doll about the nuisance issue. She asked if a person would even have to have more than 3 dogs if they're a nuisance, so they can't go give each neighbor three dogs, that still doesn't get it.

Mr. Willis stated he still holds title to the dogs.

Mrs. Rector stated right, and she doesn't want what happened last time to happen again. She stated the neighbors can still file a complaint because it is a nuisance.

Attorney Doll stated the dogs may be on a neighbor's property but the question is whose dogs are they. He stated if they are all his dogs then his interpretation is it is a deliberate attempt to circumvent the ordinance and that is a violation and it's a nuisance.

Mr. Willis asked for further discussion. There being none he entertained a motion.

Don Mottley made a motion to deny based on the following findings of facts:

1. The USE is NOT deemed essential or desirable to the public convenience or welfare.
2. The USE is NOT in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The specific site being a Residential Subdivision is NOT appropriate for the USE.
4. The USE WILL adversely affect the surrounding area.
5. The USE will be a nuisance to the residents.
6. The USE is NOT a permitted use in this zoning without the special use approval.

Terry Dayvolt seconded and the motion unanimously carried.

Mrs. Rector asked Attorney Doll if the Board should set a time limit on how long they will give him to comply.

Attorney Doll stated in keeping with the practice of other applications that the BZA has denied they have given the applicants a period of time to get rid of the excess dogs.

Mr. Willis asked how long it would take him to get down to the allowed number of dogs.

Mr. Smith stated as long as the Board will give him.

Mr. Willis stated he doesn't know how long it would take him to notify people to come and get their animals etc. He stated he needs some type of reasonable time period that won't put too much of a burden on the dog's owners.

Mr. Smith stated he would definitely need some time, he's got a guy in Florida he runs dogs for who has asthma and he won't be back until the end of April.

Attorney Doll asked Mrs. Rector what they used last time.

Mrs. Rector stated one was a week, one was three weeks.

Attorney Doll stated he thinks that 21 days is the longest period of time anyone has ever been given to get down to 3 dogs.

Mr. Willis asked if there was any further discussion. He asked if 21 days was agreeable to the Board or if anyone had a complaint with that. There being none he stated the 21 days will start tomorrow.

Attorney Doll stated to Mr. Smith it is not just to get down to the County Ordinance but it is to stay at the County Ordinance. He stated he can't move dogs across the property.

Mr. Smith stated that isn't going to happen. He stated all this did was made up his mind to sell his house.

Mr. Willis entertained a motion for giving Mr. Smith 21 days to comply.

Richard Medcalf made a motion that the dogs be removed down to the County Ordinance of 3 within 21 days starting tomorrow.

William McCune seconded and the motion unanimously carried.

Mrs. Rector stated the inspector will have to come back out.

VARIANCE:

BZA-V-08-06 – Applicant: Habitat for Humanity for Warrick County by Dennis Juncker, Construction Supervisor. Owner: Lake Group Inc. by Jerry Aigner, Secretary.

Premises – Property located on the S side of Drake Dr. approximately 95' W of the intersection formed by Drake Dr. and Mallard Circle, Ohio Twp., Lot 84 in Mallard Lake Phase I Subdivision. 7909 Drake Dr.

Nature of Case – Applicant requests a Variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit to be issued for a Single Family Dwelling not meeting the minimum front yard requirements, side yard requirements, and rear yard requirements in an "R-2" Multiple Family Zoning District. *Advertised in the Boonville Standard on March 13, 2008.*

Dennis Juncker approached the podium and stated he is out of Mt. Vernon, Indiana representing Habitat for Humanity.

Terry Dayvolt recused himself due to Mr. Metzger and him being involved with some business together.

Larry Willis recused himself due to a working relationship with Mr. Aigner, owner of Lake Group. He stated they own a business together.

Mr. Mottley took over the chair and called for a staff report.

Mrs. Rector stated there are no return receipts for this petition because all the surrounding property is owned by Lake Group and vacant. She stated the applicant is requesting a Variance to allow a residence not meeting minimum front, rear or side yard requirements. She stated the applicant is requesting to encroach into the 25' Building Setback Line (required front yard) by 1'4"; encroaching 6" into both required 6' side yards; and encroaching 8' into the required 25' rear yard. She stated the property is lot 84 in Mallard Lake Phase I zoned R-2 Multi Family. (Allowed lot coverage is 2400 sq. ft. they are wanting to cover 1933 sq. ft.) The surrounding property is zoned the same and vacant. She stated the applicant states on the application, "A one and a half story house adds additional expense because these houses are built by unskilled home owners under supervision and it is too dangerous for home owners to build a steep pitched roof home. The steep pitch roof also creates a height issue."

Mr. Mottley asked Mr. Juncker if he had anything to add.

Mr. Juncker stated he wishes the Board would consider this for the safety issue of the volunteers who are made up of a majority of older folks. He stated to build a story and a half to get the four bedrooms that this family needs is just too dangerous for them to attempt to do on this property. He stated the back of the house is on the building line, it is only the patio that is encroaching on the back line.

Mr. Mottley asked for any questions by Board Members.

Mr. Medcalf asked why they have to put this house on this lot. He asked why they can't find another lot.

Mr. Juncker stated all of the lots are the same size (60' x100') in this subdivision with the exception of the corner lots which are (64' x 100').

Mr. Medcalf asked if the lot is donated.

Mr. Juncker stated no, it is for the USDA program which is another low-income building Habitat does. He stated the people actually buy the lot.

Mrs. Rector asked why they couldn't do a 1' lot line adjustment from the corner lot so they could meet side yard requirements. She asked why a Habitat home has to have a patio. She stated it would meet the rear yard then and the only thing that would be left would be the 1' in the front yard. She stated she wants to try and make it to where it meets the requirements because they can't let every lot in the subdivision come in and not meet yard requirements.

Mr. Metzger approached the podium and asked if Mr. Juncker is buying two lots one right next door.

Mr. Juncker stated they are buying Lot 83 & 84 and stated they have options on Lot 84 and 85 and the two across the street.

Mrs. Rector stated she is talking about Lot 83 that Mr. Metzger still owns, if they could buy one foot from them and make the side yards in compliance.

Mr. Juncker stated he had not approached them about that since it was all pre-subdivided at an earlier deal with the Area Plan. He stated as far as the patio on the back, these are USDA houses so they have different guidelines then what the Habitat Houses are built under. He stated these houses have an attached garage, and requires they have a patio on the back of them so they have to put that back there.

Mrs. Rector asked if Lots 85 & 86 are going to have the same issues with the same houses.

Mr. Juncker stated no, the three bedroom house plans they have for those lots have no issues as far as getting them on the lot. He stated it is just the four bedroom house they are trying to get on this lot. He stated he went through Complete Design books looking for a plan to fit on this property and the ones he found were over one story. He stated this was an existing plan they had built before. He stated he would really like to stay with a one story house and a 5/12 roof pitch. He stated it makes it easier on the volunteers and the people that help.

Attorney Doll stated if a lot line adjustment was done between Lot 83 & 84 that would solve two of the problems. He stated if they could move the house backwards, it would relieve the front

setback. He stated they are in violation on the back anyway with the patio, but there would be 16' of clearance instead of 17'. He stated instead of having four sides in violation, they would have one, which the Board could decide on. He asked Mrs. Rector if moving it back a foot wouldn't also be helpful.

Mrs. Rector stated if she was Mr. Metzger she would want it moved back to the building line where all the houses are lined up instead of one sticking out in the front.

Mr. Metzger stated it's only 4" and it might give it some pizzazz other than just cookie cutter houses. He stated having them all with the same front can look like too much of a straight line. He stated they were concerned about the houses being built by volunteers and they were concerned about selling lots. He stated they've built four houses and they've got four under construction right now and they are well built, very nice looking homes. He stated he has not been through them but has driven by and seen people working on them. He stated it has been great. He stated there hasn't been any trash and it has been excellent for their community. He stated sometimes when you hear Habitat people want to stay away from it but they did give them good prices on the lots and they've got a nice place to build and are fitting right in with the community.

Mr. McCune stated they are not talking about the appearance of the house as much as not meeting yard requirements. He stated they are not meeting code in any way. He stated what he's worried about is if they go ahead and pass this, what's going to happen when somebody else wants to do the same thing. He stated he's looking to see if they can do something to solve this.

Mrs. Rector stated she's not a builder but they've got only one foot to comply. She asked if they could adjust the walls in the house just a few inches.

Mr. Medcalf asked if that is the garage sticking out the front. He asked if they are going to build on Lot 83 as well.

Mr. Juncker stated no, they have an option on Lot 84 and 85.

Mr. McCune asked if Lot 85 is the same as Lot 84.

Mr. Juncker stated yes, 60' x 100'.

Mrs. Rector stated they all are except for the corner lots.

Mr. Juncker stated that Lot 83 is a corner lot and has a 15' building line on Mallard Circle as well as a public utility easement so that lot actually has a smaller building area then the lot that is in question.

Mrs. Rector stated that is true. It would have to be a tiny house.

Mr. Mottley asked if there were any other questions by Board Members.

Mr. Medcalf stated the corner lot will just be sold as a regular lot. He asked Mr. Metzger if he thought this variance would have any adverse affect on Lot 83.

Mr. Metzger stated no, none whatsoever, and neither with Lot 85 because they are going to own that as well and the people understand what is going on.

Mr. Juncker stated this house is going to be part of a four house build for the USDA. He stated they've got that lot, Lot 85 and they also have an option on Lot 80 and Lot 81 which are across the street.

Mr. Medcalf asked if the house for Lot 85 is the same magnitude as this house.

Mr. Juncker stated no, as far as he understands, it will be a 3 bedroom home which is what they are currently building and they will have no problems having them on that lot.

Mr. Medcalf asked how wide those houses are.

Mr. Juncker stated 48' and 46'.

Mr. Medcalf asked if they couldn't rob Peter to pay Paul. He asked if they are buying both lots can they get the extra foot off of Lot 85.

Mrs. Rector stated the lots have to be 60' wide for that zoning. She stated the lots can't go any smaller.

Mr. Mottley asked for remonstrators for or against this petition. There being none he called for a motion.

Attorney Doll stated Article XXVI Section 2 (4) in the Comprehensive Zoning Ordinance on page 129 states a hardship can not be self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of this Article and he just wants to bring it to the Board's attention the fact that he doesn't know how the Board is going to get around that. He stated he doesn't think this house fits this lot and he's afraid it is self-created and he thinks the County Ordinance just flat precludes the Board from giving a Variance for that reason. He stated Habitat is a wonderful organization and a private individual comes this rule in one case and withhold it in some other application and a circumstance where it was self along and says the Board let somebody else get a Variance in a circumstance where it was self created, the Board will lose in court. He stated his job is to keep them out of court as the Board's council and he needs to point this out to them. He stated the ordinance is pretty clear.

Mr. Metzger stated the subdivision isn't full of people so they don't have a lot of remonstrators. He stated the Variances are what they are so they're asking for a Variance for this small lot. He stated once the people come in there and build other houses, if they see it's that way, maybe they'll say this person did it, maybe I can do it but the Board can say, they did it because they were getting the subdivision started, it was Habitat etc. He stated the Board can say there are too many people there now; they can't do it all the time. He stated they didn't buy this lot to put this particular house on it so it wasn't really self-created. He stated they bought this lot in the hopes the building plans they have all fit these lots. He stated it just so happens they had a family apply that was approved that bought the lot that needs 4 bedrooms and this is the smallest big house they can put on this lot. He stated that's the reason they are asking for this variance. He stated it's not like they are going to come in every month and ask for a Variance. He stated if that was the case they should have made their lots 75' wide.

Mrs. Rector stated she told Mr. Juncker several times there was a possibility this would not get passed because it is self created. She stated she wants the Board to know that because she doesn't want them thinking she just takes in applications and doesn't tell the people filing them that there may be a problem.

Mr. Juncker stated he realized that and he knows anytime you apply for anything there's always a possibility it won't pass.

Mr. Mottley stated he is looking at the 6" into both side yards and asked why he couldn't make two rooms 6" smaller and make the side yard requirements.

Mr. Juncker stated the USDA does have specific sizes of bedrooms and they have to meet a requirement of being at least 10' x 10'.

Attorney Doll stated it wouldn't really work to take it out of the bedrooms. He stated the only way it would work would be to take it out of the middle of the house and he doesn't see how he would do that. He stated with all due respect it is a wonderful house, it just doesn't fit.

Mr. McCune stated and it is for a good reason.

Attorney Doll stated yes it is and that is what makes it so difficult.

Mr. Medcalf stated as he read, the Board has to make decisions based on decisions they'll have to make down the line. He stated if they just start giving variances out and people think it's anything goes then the Board has not done their job very well. He asked Mr. Juncker if he sees anyway he can remedy this problem because he thinks everyone on the Board wants to help.

Mr. Mottley asked if they could change Lot 63, the corner lot from 63' to 62' he would then have the six inches that he needs on each side. He stated then they have to look at the front and back yard requirements.

Attorney Doll stated the impact on the corner lot, because there is a side setback for utilities of 15', it really shrinks the building footprint allowed and they would have a hard time selling it to build on. He stated if that could be solved and they could shift the house back one foot, they would then have one Variance instead of 4 issues and they could say a Variance in the back for a patio may not nearly be as bad, it's just a patio variance and the Board has dealt with that before. He stated they can deal with that issue fairly directly.

Mr. Mortley asked if they could make a motion to continue until next month and give the builder a chance to go back and see if he can make some minor adjustments.

Mr. Dowers asked if Mr. Juncker could take a foot out of the family room and bedroom 4. He stated that would still keep him within the ten feet he needs for the bedrooms.

Mr. Juncker stated that is a valid option. He stated 1500 square feet of living space is a pretty tight space for a family of 5. He stated he understands it's just a foot but it's along the whole house.

Attorney Doll asked if it would be a benefit to Mr. Juncker if he asked the Board to continue this so he can look into it. He stated if he wants the Board to decide tonight on the existing plot plan then they can do that. He stated if he asks for it to be continued so they can rework it, he may elect to do that.

Mr. Juncker asked if the Board would consider a continuation until next month.

Don Mortley made a motion to continue BZA-V-08-06 until next month.

Scott Dowers seconded.

Attorney Doll stated to Mr. Juncker that would give him a chance to see if he can adjust the footprint in any way shape or form.

Mr. Juncker asked what would be the Board's least concern for the Variance.

Mr. Medcalf stated something he could live with would be the patio in the back.

Attorney Doll stated they can't give him answers to fix which problem but he thinks they can share with him the fact that in the past they've been more lenient with looking at deck or patio variances.

Mr. Medcalf stated when he thinks of a deck he is thinking wood.

Mr. Juncker stated no it will be a concrete patio.

Mr. Medcalf asked if there would be a roof over it.

Mr. Juncker stated no just a slab of concrete that the USDA requires outside of the patio door.

Attorney Doll stated Mr. Juncker may find that is the least offensive problem to the Board to get a favorable outcome. He stated he's not making promises; that is just a historical observation.

Mr. McCune stated his understanding was that Mr. Juncker couldn't change the plan.

Mr. Juncker stated this plan has been approved by the USDA. He stated even though he has particular guidelines that are required as far as size of closets and bedrooms and things like that, there is a possibility he can get this drawing shrunk down a little bit more to the minimum requirements and try to get it in the footprint they need to. He stated he will still have to get the USDA to approve it. He stated they have a good working relationship with Wayne so that may be easy to do.

Attorney Doll stated to Mr. Juncker that he is not required to make a change to the plan. He stated he has a right to a vote on the application that he has before the Board tonight or a month from tonight. He stated they are just giving him the opportunity as he thinks he's asked for to look at this problem and try to solve it.

Mr. Mortley called for a vote and the motion carried.

Mrs. Rector stated the next meeting is April 23rd, 2008.

Attorney Doll asked if they do change the footprint of the building, what they are required to get to the Board.

Mrs. Rector stated the new plot plan.

Larry Willis returned and took back over the Chair.

Terry Dayvolt also returned to the Board.

Larry Willis asked for other business.

OTHER BUSINESS:

Mr. Medcalf stated the Board needs to keep in consideration for next month that Mr. Dayvolt and Mr. Willis can not vote so they need to have enough Board Members for a quorum on BZA-V-08-06.

ATTORNEY BUSINESS:

None.

EXECUTIVE DIRECTOR BUSINESS:

None.

There being no other business Larry Willis entertained a motion to adjourn the meeting.

Don Mottley made a motion to adjourn. Richard Medcalf seconded and the motion unanimously carried.

The meeting adjourned at 7:40 pm.

ATTEST:

Larry Willis, Chairman

The undersigned Secretary of the Warrick County Area Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of said Board at their monthly meeting held March 26, 2008.

Sherri Rector, Executive Director & Secretary

